

Bill No. SB 800

Barcode 943438 Comm: RCS 04/18/2007 06:15 PM

Proposed Committee Substitute by the Committee on Community
Affairs

1 A bill to be entitled

2 An act relating to comprehensive planning;

3 amending s. 163.3164, F.S.; redefining the

4 terms "urban redevelopment" and "financial

5 feasibility" for purposes of the Local

6 Government Comprehensive Planning and Land

7 Development Regulation Act; amending s.

8 163.3177, F.S.; providing for application of

9 requirements for financial feasibility with

10 respect to the elements of a comprehensive

11 plan; delaying the deadline for amendments

12 conforming public facilities with the capital

13 improvements element; specifying circumstances

14 under which transportation facilities shall be

15 deemed to be financially feasible and to have

16 achieved level-of-service standards; amending

17 s. 163.3180, F.S.; providing an additional

18 exemption from concurrency requirements for an

19 urban service area under specified

20 circumstances; requiring that a local

21 government consult with the state land planning

22 agency regarding the designation of a

23 concurrency exception area; revising provisions

24 providing an exception from transportation

25 concurrency requirements for a multiuse

26 development of regional impact; providing

27 requirements for proportionate-share mitigation

28 and proportionate fair-share mitigation with

29 respect to transportation improvements;

30 providing an effective date.

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1 Be It Enacted by the Legislature of the State of Florida:

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3 Section 1. Subsections (26) and (32) of section
4 163.3164, Florida Statutes, are amended to read:

5 163.3164 Local Government Comprehensive Planning and
6 Land Development Regulation Act; definitions.--As used in this
7 act:

8 (26) "Urban redevelopment" means demolition and
9 reconstruction or substantial renovation of existing buildings
10 or infrastructure within urban infill areas, ~~or~~ existing urban
11 service areas, or community redevelopment areas created
12 pursuant to part III.

13 (32) "Financial feasibility" means that sufficient
14 revenues are currently available or will be available from
15 committed funding sources for the first 3 years, or will be
16 available from committed or planned funding sources for years
17 4 and 5, of a 5-year capital improvement schedule for
18 financing capital improvements, such as ad valorem taxes,
19 bonds, state and federal funds, tax revenues, impact fees, and
20 developer contributions, which are adequate to fund the
21 projected costs of the capital improvements identified in the
22 comprehensive plan necessary to ensure that adopted
23 level-of-service standards are achieved and maintained within
24 the period covered by the 5-year schedule of capital
25 improvements. A comprehensive plan shall be deemed financially
26 feasible for transportation and school facilities throughout
27 the planning period addressed by the capital improvements
28 schedule if it can be demonstrated that the level-of-service
29 standards will be achieved and maintained by the end of the
30 planning period even if in a particular year such improvements
31 are not concurrent as required by s. 163.3180. ~~The requirement~~

~~that level of service standards be achieved and maintained
shall not apply if the proportionate share process set forth
in s. 163.3180(12) and (16) is used.~~

Section 2. Subsections (2) and (3) of section
163.3177, Florida Statutes, are amended to read:

163.3177 Required and optional elements of
comprehensive plan; studies and surveys.--

(2) Coordination of the several elements of the local
comprehensive plan shall be a major objective of the planning
process. The several elements of the comprehensive plan shall
be consistent, and the comprehensive plan shall be financially
feasible. Financial feasibility shall be determined using
professionally accepted methodologies and applies to the
5-year planning period, except in the case of a long-term
transportation or school concurrency management system, in
which case a 10-year or 15-year period applies.

(3)(a) The comprehensive plan shall contain a capital
improvements element designed to consider the need for and the
location of public facilities in order to encourage the
efficient use ~~utilization~~ of such facilities and set forth:

1. A component that ~~which~~ outlines principles for
construction, extension, or increase in capacity of public
facilities, as well as a component that ~~which~~ outlines
principles for correcting existing public facility
deficiencies, which are necessary to implement the
comprehensive plan. The components shall cover at least a
5-year period.

2. Estimated public facility costs, including a
delineation of when facilities will be needed, the general
location of the facilities, and projected revenue sources to
fund the facilities.

1 3. Standards to ensure the availability of public
2 facilities and the adequacy of those facilities including
3 acceptable levels of service.

4 4. Standards for the management of debt.

5 5. A schedule of capital improvements which includes
6 publicly funded projects, and which may include privately
7 funded projects for which the local government has no fiscal
8 responsibility, necessary to ensure that adopted
9 level-of-service standards are achieved and maintained. For
10 capital improvements that will be funded by the developer,
11 financial feasibility shall be demonstrated by being
12 guaranteed in an enforceable development agreement or
13 interlocal agreement pursuant to paragraph (10)(h), or other
14 enforceable agreement. These development agreements and
15 interlocal agreements shall be reflected in the schedule of
16 capital improvements if the capital improvement is necessary
17 to serve development within the 5-year schedule. If the local
18 government uses planned revenue sources that require referenda
19 or other actions to secure the revenue source, the plan must,
20 in the event the referenda are not passed or actions do not
21 secure the planned revenue source, identify other existing
22 revenue sources that will be used to fund the capital projects
23 or otherwise amend the plan to ensure financial feasibility.

24 6. The schedule must include transportation
25 improvements included in the applicable metropolitan planning
26 organization's transportation improvement program adopted
27 pursuant to s. 339.175(7) to the extent that such improvements
28 are relied upon to ensure concurrency and financial
29 feasibility. The schedule must also be coordinated with the
30 applicable metropolitan planning organization's long-range
31 transportation plan adopted pursuant to s. 339.175(6).

1 (b)1. The capital improvements element shall be
2 reviewed on an annual basis and modified as necessary in
3 accordance with s. 163.3187 or s. 163.3189 in order to
4 maintain a financially feasible 5-year schedule of capital
5 improvements. Corrections and modifications concerning costs;
6 revenue sources; or acceptance of facilities pursuant to
7 dedications which are consistent with the plan may be
8 accomplished by ordinance and shall not be deemed to be
9 amendments to the local comprehensive plan. A copy of the
10 ordinance shall be transmitted to the state land planning
11 agency. An amendment to the comprehensive plan is required to
12 update the schedule on an annual basis or to eliminate, defer,
13 or delay the construction for any facility listed in the
14 5-year schedule. All public facilities shall be consistent
15 with the capital improvements element. Amendments to implement
16 this section must be adopted and transmitted no later than
17 December 1, 2008 ~~2007~~. Thereafter, a local government may not
18 amend its future land use map, except for plan amendments to
19 meet new requirements under this part and emergency amendments
20 pursuant to s. 163.3187(1)(a), after December 1, 2008 ~~2007~~,
21 and every year thereafter, unless and until the local
22 government has adopted the annual update and it has been
23 transmitted to the state land planning agency.

24 2. Capital improvements element amendments adopted
25 after the effective date of this act shall require only a
26 single public hearing before the governing board which shall
27 be an adoption hearing as described in s. 163.3184(7). Such
28 amendments are not subject to the requirements of s.
29 163.3184(3)-(6).

30 (c) If the local government does not adopt the
31 required annual update to the schedule of capital improvements

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1 ~~or the annual update is found not in compliance~~, the state
2 land planning agency must notify the Administration
3 Commission. A local government that has a demonstrated lack of
4 commitment to meeting its obligations identified in the
5 capital improvements element may be subject to sanctions by
6 the Administration Commission pursuant to s. 163.3184(11).

7 (d) If a local government adopts a long-term
8 concurrency management system pursuant to s. 163.3180(9), it
9 must also adopt a long-term capital improvements schedule
10 covering up to a 10-year or 15-year period, and must update
11 the long-term schedule annually. The long-term schedule of
12 capital improvements must be financially feasible.

13 (e) At the discretion of the local government and
14 notwithstanding the requirements of this subsection, a
15 comprehensive plan, as revised by an amendment to its future
16 land use map, shall be deemed to be financially feasible and
17 to have achieved and maintained level-of-service standards
18 with respect to transportation facilities as required by this
19 section if the amendment to the future land use map is
20 supported by a development-of-regional impact development
21 order condition or binding agreement which addresses
22 proportionate share or proportionate fair-share mitigation
23 consistent with:

24 1. Section 163.3180(12); or

25 2. Section 163.3180(16)(f) if the amendment is located
26 within an area that is designated in the comprehensive plan
27 for urban infill, urban redevelopment, downtown
28 revitalization, urban infill and redevelopment, or an urban
29 service area.

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31 The binding agreement must be based on the maximum amount of

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1 development identified by the future land use map amendment.

2 Section 3. Subsections (5), (12), and (16) of section
3 163.3180, Florida Statutes, are amended to read:

4 163.3180 Concurrency.--

5 (5)(a) The Legislature finds that under limited
6 circumstances dealing with transportation facilities,
7 countervailing planning and public policy goals may come into
8 conflict with the requirement that adequate public facilities
9 and services be available concurrent with the impacts of such
10 development. The Legislature further finds that often the
11 unintended result of the concurrency requirement for
12 transportation facilities is the discouragement of urban
13 infill development and redevelopment. Such unintended results
14 directly conflict with the goals and policies of the state
15 comprehensive plan and the intent of this part. Therefore,
16 exceptions from the concurrency requirement for transportation
17 facilities may be granted as provided by this subsection.

18 (b) A local government may grant an exception from the
19 concurrency requirement for transportation facilities if the
20 proposed development is otherwise consistent with the adopted
21 local government comprehensive plan and is a project that
22 promotes public transportation or is located within an area
23 designated in the comprehensive plan for:

24 1. Urban infill development;~~;~~

25 2. Urban redevelopment;~~;~~

26 3. Downtown revitalization;~~;~~ ~~or~~

27 4. Urban infill and redevelopment under s. 163.2517;~~;~~

28 ~~or~~;

29 5. An urban service area specifically designated as a
30 transportation-concurrency-exception area which includes lands
31 appropriate for compact, contiguous urban development, which

1 does not exceed the amount of land needed to accommodate the
2 projected population growth at densities consistent with the
3 adopted comprehensive plan within the 10-year planning
4 timeframe, and which is served or is planned to be served with
5 public facilities and services as provided by the capital
6 improvements element.

7 (c) The Legislature also finds that developments
8 located within urban infill, urban redevelopment, existing
9 urban service, or downtown revitalization areas or areas
10 designated as urban infill and redevelopment areas under s.
11 163.2517 which pose only special part-time demands on the
12 transportation system should be excepted from the concurrency
13 requirement for transportation facilities. A special
14 part-time demand is one that does not have more than 200
15 scheduled events during any calendar year and does not affect
16 the 100 highest traffic volume hours.

17 (d) A local government shall establish guidelines in
18 the comprehensive plan for granting the exceptions authorized
19 in paragraphs (b) and (c) and subsections (7) and (15) which
20 must be consistent with and support a comprehensive strategy
21 adopted in the plan to promote the purpose of the exceptions.

22 (e) The local government shall adopt into the plan and
23 implement long-term strategies to support and fund mobility
24 within the designated exception area, including alternative
25 modes of transportation. The plan amendment shall also
26 demonstrate how strategies will support the purpose of the
27 exception and how mobility within the designated exception
28 area will be provided. In addition, the strategies must
29 address urban design; appropriate land use mixes, including
30 intensity and density; and network connectivity plans needed
31 to promote urban infill, redevelopment, or downtown

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1 revitalization. The comprehensive plan amendment designating
2 the concurrency exception area shall be accompanied by data
3 and analysis justifying the size of the area.

4 (f) Prior to the designation of a concurrency
5 exception area, the state land planning agency and the
6 Department of Transportation shall be consulted by the local
7 government to assess the impact that the proposed exception
8 area is expected to have on the adopted level-of-service
9 standards established for Strategic Intermodal System
10 facilities, as defined in s. 339.64, and roadway facilities
11 funded in accordance with s. 339.2819. Further, the local
12 government shall, in consultation ~~cooperation~~ with the state
13 land planning agency and the Department of Transportation,
14 develop a plan to mitigate any impacts to the Strategic
15 Intermodal System, including, if appropriate, the development
16 of a long-term concurrency management system pursuant to
17 subsection (9) and s. 163.3177(3)(d). The exceptions may be
18 available only within the specific geographic area of the
19 jurisdiction designated in the plan. Pursuant to s. 163.3184,
20 any affected person may challenge a plan amendment
21 establishing these guidelines and the areas within which an
22 exception could be granted.

23 (g) Transportation concurrency exception areas
24 existing prior to July 1, 2005, shall meet, at a minimum, the
25 provisions of this section by July 1, 2006, or at the time of
26 the comprehensive plan update pursuant to the evaluation and
27 appraisal report, whichever occurs last.

28 (12) ~~When authorized by a local comprehensive plan, A~~
29 ~~multiuse~~ development of regional impact may satisfy the
30 transportation concurrency requirements of the local
31 comprehensive plan, the local government's concurrency

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1 management system, and s. 380.06 by payment of a

2 proportionate-share contribution for local and regionally

3 significant traffic impacts, if:

4 ~~(a) The development of regional impact meets or~~
5 ~~exceeds the guidelines and standards of s. 380.0651(3)(h) and~~
6 ~~rule 28-24.032(2), Florida Administrative Code, and includes a~~
7 ~~residential component that contains at least 100 residential~~
8 ~~dwelling units or 15 percent of the applicable residential~~
9 ~~guideline and standard, whichever is greater;~~

10 ~~(a)(b)~~ The development of regional impact which, based
11 on its location or mix of land uses, ~~contains an integrated~~
12 ~~mix of land uses and~~ is designed to encourage pedestrian or
13 other nonautomotive modes of transportation;

14 ~~(b)(c)~~ The proportionate-share contribution for local
15 and regionally significant traffic impacts is sufficient to
16 pay for one or more required mobility improvements that will
17 benefit a regionally significant transportation facility;

18 ~~(c)(d)~~ The owner and developer of the development of
19 regional impact pays or assures payment of the
20 proportionate-share contribution; and

21 ~~(d)(e)~~ If the regionally significant transportation
22 facility to be constructed or improved is under the
23 maintenance authority of a governmental entity, as defined by
24 s. 334.03(12), other than the local government with
25 jurisdiction over the development of regional impact, the
26 developer is required to enter into a binding and legally
27 enforceable commitment to transfer funds to the governmental
28 entity having maintenance authority or to otherwise assure
29 construction or improvement of the facility.

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31 The proportionate-share contribution may be applied to any

1 transportation facility to satisfy the provisions of this
2 subsection and the local comprehensive plan, but, for the
3 purposes of this subsection, the amount of the
4 proportionate-share contribution shall be calculated based
5 upon the cumulative number of trips from the proposed
6 development expected to reach roadways during the peak hour
7 from the complete buildout of a stage or phase being approved,
8 divided by the change in the peak hour maximum service volume
9 of roadways resulting from construction of an improvement
10 necessary to maintain the adopted level of service, multiplied
11 by the construction cost, at the time of developer payment, of
12 the improvement necessary to maintain the adopted level of
13 service. For purposes of this subsection, "construction cost"
14 includes all associated costs of the improvement.
15 Proportionate-share mitigation shall be limited to ensure that
16 a development of regional impact meeting the requirements of
17 this subsection mitigates its impact on the transportation
18 system but is not responsible for the additional cost of
19 reducing or eliminating backlogs.

20 (16) It is the intent of the Legislature to provide a
21 method by which the impacts of development on transportation
22 facilities can be mitigated by the cooperative efforts of the
23 public and private sectors. The methodology used to calculate
24 proportionate fair-share mitigation under this section shall
25 be as provided for in subsection (12).

26 (a) By December 1, 2006, each local government shall
27 adopt by ordinance a methodology for assessing proportionate
28 fair-share mitigation options. By December 1, 2005, the
29 Department of Transportation shall develop a model
30 transportation concurrency management ordinance with
31 methodologies for assessing proportionate fair-share

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1 mitigation options.

2 (b)1. In its transportation concurrency management
3 system, a local government shall, by December 1, 2006, include
4 methodologies that will be applied to calculate proportionate
5 fair-share mitigation. A developer may choose to satisfy all
6 transportation concurrency requirements by contributing or
7 paying proportionate fair-share mitigation if transportation
8 facilities or facility segments identified as mitigation for
9 traffic impacts are specifically identified for funding in the
10 5-year schedule of capital improvements in the capital
11 improvements element of the local plan or the long-term
12 concurrency management system or if such contributions or
13 payments to such facilities or segments are reflected in the
14 5-year schedule of capital improvements in the next regularly
15 scheduled update of the capital improvements element. Updates
16 to the 5-year capital improvements element which reflect
17 proportionate fair-share contributions may not be found not in
18 compliance based on ss. 163.3164(32) and 163.3177(3) if
19 additional contributions, payments or funding sources are
20 reasonably anticipated during a period not to exceed 10 years
21 to fully mitigate impacts on the transportation facilities.

22 2. Proportionate fair-share mitigation shall be
23 applied as a credit against impact fees to the extent that all
24 or a portion of the proportionate fair-share mitigation is
25 used to address the same capital infrastructure improvements
26 contemplated by the local government's impact fee ordinance.

27 (c) Proportionate fair-share mitigation includes,
28 without limitation, separately or collectively, private funds,
29 contributions of land, and construction and contribution of
30 facilities and may include public funds as determined by the
31 local government. Proportionate fair-share mitigation may be

1 directed toward one or more specific transportation
2 improvements reasonably related to the mobility demands
3 created by the development and such improvements may address
4 one or more modes of travel. The fair market value of the
5 proportionate fair-share mitigation shall not differ based on
6 the form of mitigation. A local government may not require a
7 development to pay more than its proportionate fair-share
8 contribution regardless of the method of mitigation.
9 Proportionate fair-share mitigation shall be limited to ensure
10 that a development meeting the requirements of this section
11 mitigates its impact on the transportation system but is not
12 responsible for the additional cost of reducing or eliminating
13 backlogs.

14 (d) Nothing in this subsection shall require a local
15 government to approve a development that is not otherwise
16 qualified for approval pursuant to the applicable local
17 comprehensive plan and land development regulations.

18 (e) Mitigation for development impacts to facilities
19 on the Strategic Intermodal System made pursuant to this
20 subsection requires the concurrence of the Department of
21 Transportation.

22 (f) In the event the funds in an adopted 5-year
23 capital improvements element are insufficient to fully fund
24 construction of a transportation improvement required by the
25 local government's concurrency management system, a local
26 government and a developer may still enter into a binding
27 proportionate-share agreement authorizing the developer to
28 construct that amount of development on which the
29 proportionate share is calculated if the proportionate-share
30 amount in such agreement is sufficient to pay for one or more
31 improvements which will, in the opinion of the governmental

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1 entity or entities maintaining the transportation facilities,
2 significantly benefit the impacted transportation system. The
3 improvement or improvements funded by the proportionate-share
4 component must be adopted into the 5-year capital improvements
5 schedule of the comprehensive plan at the next annual capital
6 improvements element update. The funding of such improvement
7 or improvements that significantly benefit the impacted
8 transportation system shall satisfy concurrency as a
9 mitigation of the development's impact upon the overall
10 transportation system.

11 (g) Except as provided in subparagraph (b)1., nothing
12 in this section shall prohibit the Department of Community
13 Affairs from finding other portions of the capital
14 improvements element amendments not in compliance as provided
15 in this chapter.

16 (h) The provisions of this subsection do not apply to
17 a multiuse development of regional impact satisfying the
18 requirements of subsection (12).

19 Section 4. This act shall take effect July 1, 2007.
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